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## **Council Meeting**

November 16, 2016

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# **NOTICE OF PUBLIC MEETING**

**TO THE PUBLIC AND RESIDENTS OF VERNAL CITY:** Notice is hereby given that the **VERNAL CITY COUNCIL** will hold a regular meeting on **Wednesday, November 16, 2016 at 7:00 p.m.** in the Vernal City Council Chambers at 374 East Main St, Vernal, Utah.

## **A G E N D A**

**7:00 p.m.**

### **OPENING CEREMONY**

1. Invocation or Uplifting Thought
2. Pledge of Allegiance

### **STANDING BUSINESS**

1. Appointment of Mayor Pro Tempore
2. Approval of the Minutes of November 2, 2016 Regular Meeting

### **PUBLIC BUSINESS**

1. Law Enforcement Appreciation Event - Elizabeth Matthews
2. Youth City Council Report - Jake Abrams, Youth Mayor

### **POLICY & LEGISLATION**

1. Request to Amend the Vernal City Municipal Code, Chapter 2.80 - Personnel System - Adding an Appeal Hearing Officer & Procedures - Ordinance No 2016-16 - Ken Bassett
2. Request to Amend the Vernal City Personnel Policies and Procedures - Section 12.05.050 - Pre-Disciplinary hearing with Employee - Resolution No. 2016-13 - Ken Bassett
3. Request to Amend the Vernal City Municipal Code, Chapter 5.60 - Residential Solicitation and Chapter 5.74 - Taxi Service - Ordinance No. 2016-17 - Ken Bassett

### **ADMINISTRATIVE REPORTS**

- |                            |                          |
|----------------------------|--------------------------|
| 1. Planning and Zoning     | 4. Uintah Recreation SSD |
| 2. Downtown Revitalization | 5. Animal Services SSD   |
| 3. Cemetery Board          | 6. Fire SSD              |

### **ADJOURN**

NOTE: In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting should notify Ken Bassett, 374 East Main, Vernal, Utah 84078 or phone (435) 789-2255 at least three days before the meeting.

## MEMORANDUM

**TO:** Mayor & City Council

**FROM:** Ken Bassett, City Manager

**RE:** *Agenda Items of November 16, 2016 Council Meeting.*

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### PUBLIC BUSINESS

1. **Law Enforcement Appreciation Event - Elizabeth Matthews:** Ms. Matthews has asked to come before the Council to seek support for a law enforcement appreciation event. I do not have any dates or any more details. I am sure that Ms. Matthews will provide those during her presentation.
2. **Youth City Council Report - Jake Abrams, Youth Mayor:** Jake will make a presentation to the City Council regarding the recent activities of the Youth City Council and their involvement with Holly Days, as well as other activities going into January of next year.

### POLICY & LEGISLATION

1. **Request to Amend the Vernal City Municipal Code, Chapter 2.80 - Personnel System - Adding an Appeal Hearing Officer & Procedures - Ordinance No 2016-16 - Ken Bassett:** This ordinance pertains generally to the implementation of a Hearing Officer to hear appeals associated with employee discipline. I believe all the Council members were very interested in having an Appeals Officer take charge in this rather than having the City Council do it. You will note in the ordinance; however, that it can be done one way or the other. We do have an Appeals Officer, Mike Drechsel, who would be the one to do this for the time being. I would encourage you to read through the ordinance, and if you have any questions, please jot those down so we can discuss them at the Council meeting.
2. **Request to Amend the Vernal City Personnel Policies and Procedures - Section 12.05.050 - Pre-Disciplinary hearing with Employee - Resolution No. 2016-13 - Ken Bassett:** This resolution is more of a housekeeping item. The City attorney, Dennis Judd, just wanted to add a few things to provide clarification to the process for a pre-disciplinary hearing.
3. **Request to Amend the Vernal City Municipal Code, Chapter 5.60 - Residential Solicitation and Chapter 5.74 - Taxi Service - Ordinance No. 2016-17 - Ken Bassett:** I am recommending some amendments to these two provisions in our business license Code. The major one is providing an appeals process for taxi cab applicants or licensees. We did not have that in there before, but we did have it for the solicitation. Once again, if you will read through the ordinance, and jot down your notes, I would appreciate it. Thank you!

**MINUTES OF THE VERNAL CITY COUNCIL REGULAR MEETING HELD  
NOVEMBER 2, 2016** at 7:00 p.m. in the Vernal City Council room, 374 East Main,  
Vernal, Utah 84078.

**PRESENT:** Councilmembers Ted Munford, Dave Everett, Samantha Scott, Bert Clark, Travis Allan and Mayor Sonja Norton.

**WELCOME:** Mayor Sonja Norton welcomed everyone to the meeting.

**INVOCATION OR UPLIFTING THOUGHT:** An invocation was given by Councilmember Bert Clark.

**PLEDGE OF ALLEGIANCE:** The pledge of Allegiance was led by Councilmember Ted Munford.

**APPROVAL OF MINUTES OF SPECIAL MEETING ON OCTOBER 26, 2016:**  
*Councilmember Bert Clark moved to approve the minutes of October 26, 2016 with corrections. Councilmember Dave Everett seconded the motion. The motion passed with Councilmembers Munford, Allan, Everett, Scott, and Clark voting in favor for a unanimous vote.*

**VERNAL AREA CHAMBER OF COMMERCE ANNUAL UPDATE – JOEL BROWN & BEN CLUFF:** Joel Brown, Director of the Chamber of Commerce, explained that he would like to give an annual report to the City for this last year. He noted that the Chamber held the first annual education summit, and the Governor attended that event. The Chamber also participates in the annual Holly Days event, Trees for Charity, and the summer passport program. Councilmember Bert Clark asked if they are actively marketing for new members. Mr. Brown stated they are always actively involved in recruiting, and if someone is interested, he asked the City to have them contact him. Ben Cluff, Chairperson of the Chamber of Commerce, expressed his appreciation to the City for their sponsorship of the Chamber. The Chamber is currently sponsoring a program development workshop to help struggling businesses. Councilmember Clark stated that individuals can also join the Chamber of Commerce and suggested the Chamber look at the agricultural businesses as this area has a lot of small farmers who may want to be a part of the Chamber. Ben Cluff stated he liked that suggestion as they do participate with the farmers market. Mayor Norton thanked the Chamber of Commerce for all they do for the community.

**REQUEST FOR APPROVAL TO AMEND ALCOHOL LICENSING PROVISIONS FOR DINING CLUBS – ORDINANCE NO. 2016-15:** Ken Bassett explained that the State of Utah sets the directives for businesses that sell alcoholic beverages, and there are many different types of licenses. If a store wants to sell beer they need a certain license, or if there is a one-day event they need a different license. The City has received a request for a specific license for a restaurant to allow them to sell both beer and alcoholic beverages which has different restrictions than a normal restaurant license. The business must obtain a license from the City, then obtain a license from the State Alcoholic Beverage Control Commission before they are able to sell alcoholic beverages. The type of license being requested is for a dining club which allows a restaurant to have 40% of their sales be in alcoholic beverages instead of 30% and does not allow minors inside without an adult. The City does not currently offer this type of license, so

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Ordinance No. 2016-15 would amend the City's business license code to allow dining clubs. Mayor Sonja Norton asked if the State sets the regulations for the Ordinance. Ken Bassett stated yes, the wording is from State law. Ginger Bowden, Vernal Brewing Company, stated she opened the restaurant three years ago and has noticed that the laws are cumbersome for tourists who are used to walking around with their drink. Under the restaurant license, the server has to move their drink to another table, and they are not allowed to take the drink out on the patio. The reasoning is that it creates a bar-like atmosphere. The dining club license would alleviate a lot of those issues as well as allowing a patron to simply purchase a beer without ordering food. The risk with this license is if there are two 18 year olds who come in to eat, they cannot do that. Councilmember Dave Everett asked if she would risk eliminating clientele under 21. Ginger Bowden answered no, the restaurant will still be family friendly, and just anyone under 21 must be accompanied by someone over 21. Councilmember Everett stated he likes any change that helps promote business and make the regulations less complicated to tourists. Councilmember Ted Munford agreed that he is in favor of allowing small businesses to grow. Ken Bassett stated that one item he left out of the ordinance was the fee. He suggested the fee be \$200 a year which is the same as a restaurant license. Mayor Norton asked if they have already paid the restaurant license fee, would this fee be on top of that. Ken Bassett answered no, the restaurant fee would be applied to this license. Councilmember Travis Allan clarified if a group of 20 year olds wanted to come in they would not be allowed on the premises. Ginger Bowden answered yes, that would be a change for her business. After further discussion, *Councilmember Dave Everett moved to approve Ordinance No. 2016-15 with the addition of the \$200 fee for the license. Councilmember Samantha Scott seconded the motion. The motion passed with the following roll call vote:*

<i>Councilmember Munford</i> .....	<i>aye;</i>
<i>Councilmember Allan</i> .....	<i>aye;</i>
<i>Councilmember Everett</i> .....	<i>aye;</i>
<i>Councilmember Scott</i> .....	<i>aye;</i>
<i>Councilmember Clark</i> .....	<i>aye.</i>

**PUBLIC HEARING: REQUEST FOR APPROVAL TO AMEND THE VERNAL CITY MUNICIPAL PLANNING AND ZONING CODE – CHAPTER 16.04 DEFINITIONS, CHAPTER 16.06 ADMINISTRATION AND PROCEDURES, CHAPTER 16.14 CONDITIONAL USES, CHAPTER 16.16 PLANNED RESIDENTIAL UNIT DEVELOPMENT, CHAPTER 16.22 HOME OCCUPATIONS, CHAPTER 16.24 SUPPLEMENTARY REGULATIONS, CHAPTER 16.26 OFF-STREET PARKING AND VEHICLE ACCESS STANDARDS, CHAPTER 16.27 LANDSCAPING REQUIREMENTS, CHAPTER 16.36 R-1 RESIDENTIAL ZONE, CHAPTER 16.38 RA-1 RESIDENTIAL-AGRICULTURAL, CHAPTER 16.40 R-2 RESIDENTIAL ZONE, CHAPTER 16.42 R-3 RESIDENTIAL ZONE, CHAPTER 16.48 C-2 AND CC-1 COMMERCIAL ZONES, CHAPTER 16.50 CP-2 AND CCP-1 PLANNED COMMERCIAL ZONES, CHAPTER 16.52 I-1 INDUSTRIAL ZONES, CHAPTER 16.54 F-1 AND P-1 FAIRGROUNDS AND PARK ZONES, CHAPTER 16.55 HC-1 HEALTH CARE ZONE, 16.56 MANUFACTURED HOME PARK AND TRAVEL TRAILER COURT REGULATIONS, CHAPTER 16.58 SUBDIVISION CODE, AND CHAPTER**

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93 **16.60 MASTER SITE PLAN – ORDINANCE NO. 2016-13:** Ken Bassett explained that this  
94 Ordinance is dealing with the Planning and Zoning code of the City, which is the section that  
95 deals with land use, so it requires a public hearing. The majority of the ordinance is simply to  
96 provide clarity, and maybe in a few cases change, requirements based on what the Council wants  
97 to do. Mayor Sonja Norton asked if the Building Official duties are being moved to Title 15.  
98 Ken Bassett answered yes, all of those responsibilities are being moved to that title, but it needs  
99 to refer to the definition which is in Chapter 16.04. Also, the definition is adding an authorized  
100 designee so if the building official is ill or unavailable, someone else that is authorized can take  
101 care of those responsibilities. Councilmember Munford stated the ordinance needs to specify  
102 how that person is authorized so it is clear. Ken Bassett stated it is usually authorized by  
103 the City Manager or Mayor. The ordinance refers to the planning director also in many areas to  
104 show what he is in charge of. Also, there was no definition for setbacks which is referred to in  
105 the code and only refers to property with a structure. Section 16.22 refers to home occupations,  
106 but the licensing needs to be in Title 5 with other business licenses. One item from the  
107 discussion at the last meeting was dealing with urban farming which is very common which will  
108 be addressed later by the Planning Commission. Ken indicated that the Planning Commission  
109 reviewed this ordinance before the Council tonight and do not want to be reviewing items that  
110 should be an administrative function dealing with architects, engineers etc.  
111

112 Ken Bassett explained that some time ago language was added regarding what buildings should  
113 look like when they were built, with this ordinance that language has been deleted in two zones.  
114 He stated that the language could be considered arbitrary or capricious and the Planning  
115 Commission felt it was not needed as they can waive this requirement. Councilmember Bert  
116 Clark stated the intent when that was added was to make sure the façade of a building was  
117 attractive and pleasing for that area. He noted that metal buildings deteriorate over time with  
118 the paint fading or chipping off, and the intent was to keep commercial areas aesthetically  
119 pleasing. Councilmember Munford did not think the Council should be involved in what a  
120 business looks like, only the maintenance. Councilmember Samantha Scott agreed that the City  
121 cannot determine what looks nice, or list potential outside materials of a structure. There was  
122 some discussion regarding poor landlords or no upkeep of a commercial business. Mayor  
123 Norton suggested the staff research other communities to see how they keep their downtown area  
124 looking nice. She stated that a minimum standard is needed for buildings and parking lots.  
125 Councilmember Clark stated that the industrial area is slowly deteriorating. Councilmember  
126 Travis Allan stated that some communities are very restrictive such as Park City, and areas of  
127 Vernal such as the Vernal Towne Center would look a lot different if they could simply put up  
128 clapboard painted buildings. The code needs to have something in there so there are not  
129 problems in the future. Mayor Norton suggested the Council schedule a work session to discuss  
130 this issue and decide on at least a minimum level of aesthetics.  
131

132 Gil Lamb, resident, stated he would like to see the City maintain the integrity along Highway 40  
133 so there are no metal buildings that become an eye sore. He asked the Council to consider some  
134 regulations to keep the community looking nice. Councilmember Munford stated there are  
135 different cultures that have different ideas of beauty that will have to be considered.  
36

137 Mayor Sonja Norton opened the public hearing. There were no further public comments and

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the public hearing was closed. *Councilmember Ted Munford moved to approve Ordinance No. 2016-13 excluding the deletion of the type of building and adding authorized designee as noted. Councilmember Travis Allan seconded the motion. The motion passed with the following roll call vote:*

*Councilmember Munford..... aye;*  
*Councilmember Allan ..... aye;*  
*Councilmember Everett..... aye;*  
*Councilmember Scott..... aye;*  
*Councilmember Clark.....not present for the vote.*

**REQUEST FOR APPROVAL TO AMEND THE VERNAL CITY MUNICIPAL CODE – ORDINANCE NO. 2016-14, TITLE 5 – BUSINESS LICENSES & REGULATIONS, TITLE 9 – PUBLIC SAFETY, TITLE 13 – PUBLIC UTILITIES, TITLE 15 – BUILDINGS & CONSTRUCTION:** Ken Bassett explained that this Ordinance provides clarity for the sections dealing with building and construction and home occupations which have been moved out of the planning and zoning code. The home occupation license can be revoked if the business is not in compliance with local, state or federal rules. Also, there are a couple of issues dealing with the water superintendent as it is his call regarding how he reviews water systems for the City. The code enforcement duties have been moved to Title 15 and the authorized designee for the building official will be added by appointment of the City Manager or Mayor. Also, there may be a situation where a contractor appeals the decision of the building inspector and that appeal will be handled by the Appeals Officer of the City. After further discussion, *Councilmember Bert Clark moved to approve Ordinance No. 2016-14 with the corrections noted. Councilmember Travis Allan seconded the motion. The motion passed with the following roll call vote:*

*Councilmember Munford..... aye;*  
*Councilmember Allan ..... aye;*  
*Councilmember Everett..... aye;*  
*Councilmember Scott..... aye;*  
*Councilmember Clark..... aye.*

**ADMINISTRATIVE REPORTS:**

Flood Control:

Councilmember Bert Clark stated that sewer treatment plant has been working on water infiltration and have found several places that they hope with repair will make a big difference. Mayor Norton asked if the three sewer entities were going to meet with the County to see what could be done. Councilmember Clark answered yes.

Interfaith Counsel:

Mayor Norton explained that she met with several people regarding setting up an Interfaith Counsel to address issues in the community. Councilmember Dave Everett has been asked to spearhead that program, and he has accepted that appointment.

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Holiday dinner:

Ken Bassett asked the Council to look at their calendars and set a date for their annual Christmas dinner. After discussion, the consensus was to plan on Thursday, December 22<sup>nd</sup>.

**ADJOURN:** There being no further business, Councilmember Samantha Scott moved to adjourn. Councilmember Dave Everett seconded the motion. The motion passed with a unanimous vote and the meeting was declared adjourned.

\_\_\_\_\_  
Mayor Sonja Norton

ATTEST:

\_\_\_\_\_  
Roxanne Behunin, Deputy Recorder

( S E A L )

**ORDINANCE NO. 2016-16**

**AN ORDINANCE AMENDING THE VERNAL CITY MUNICIPAL CODE, AMENDING CHAPTER 2.80 - PERSONNEL SYSTEM, SECTION 2.80.010 - PERSONNEL SYSTEM ESTABLISHED, 2.80.020 - PERSONNEL APPEAL OF DECISION, 2.80.021 - APPEAL HEARING OFFICER, 2.80.022 - SCHEDULING HEARING - NOTICE, REPEALING SECTIONS 2.80.023 - CONDUCTING HEARING, 2.80.024 - ADDITIONAL HEARING PROCEDURES, AMENDING SECTION 2.80.025 - APPEAL BOARD QUORUM - ALTERNATE APPOINTMENTS, REPEALING SECTION 2.80.026 - BURDEN OF PROOF AND STANDARD OF REVIEW, ADDING SECTIONS 2.80.030 - FAILURE TO APPEAR - DEFAULT, 2.80.040 - LEGAL COUNSEL, 2.80.050 - HEARING RECORDED, 2.80.060 -OBJECTIONS TO PROCEDURES OR HEARING BOARD, 2.80.070 -EXCHANGE OF INFORMATION; DISCOVER; SUBPOENAS, 2.80.080 -NATURE OF HEARING AND EVIDENCE, 2.80.090 -STIPULATION TO ADDITIONAL REMEDIES, 2.80.100 - HEARING PROCEDURES, 2.80.110 - ORDER OF PRESENTATION, 2.80.120 - DECISION ON APPEAL, 2.80.130 - RECONSIDERATION - APPEAL.**

**WHEREAS**, The Vernal City Council has established a disciplinary policy for City employees; and

**WHEREAS**, The Council desires to update the process for personnel disciplinary appeals while complying with Utah State statute; and

**WHEREAS**, Vernal City has determined that the best interests and welfare of the public within their jurisdiction will best be served by approving this Ordinance; and

**WHEREAS**, the City Council has received input from the public at large in duly noticed open meetings, and has considered and discussed the advantages and disadvantages of such regulation.

**BE IT ORDAINED BY THE CITY COUNCIL OF VERNAL CITY, UTAH AS FOLLOWS:**

**Section 1. Section 2.80.010 is hereby amended to read as follows**

**2.80.010 Personnel system established.**

A. There is adopted and established an employee personnel system for Vernal City which shall be based on the following principles and provide for:

1. A City-wide system of employment in municipal government free from personal and political considerations;
2. Equal employment opportunity without discrimination against any employees or applicants for employment because of race, creed, color, ancestry, religion, sex, age, national origin or disability;
3. Just and equitable incentives and conditions of employment established and

maintained to promote efficiency and economy in the operation of Vernal City government;

4. Positions having similar duties and responsibilities classified and compensated on a justifiable and uniform basis;

5. Appointments, promotions and all other personnel action requiring the application of the merit principles based on systematic and validated tests and evaluations;

6. High morale maintained by the fair and just administration of this chapter and by every consideration of the rights and interests of employees, consistent with the best interests of the public and Vernal City;

7. A formal plan of adopted and published rules and regulations for the appointment, dismissal, promotion, demotion, transfer, tenure, discipline, classification, compensation, benefits, training, and all other employment practices, policies and procedures which affect Vernal City employees.

B. All officers and positions of Vernal City are divided into either the classified service or the exempt service.

1. The exempt service shall include the following:

a. All elected officials including members of boards and commissions;

b. The City Manager and department heads appointed by the City Manager;

c. Volunteer personnel and personnel appointed to serve without pay;

d. Consultants and legal counsel rendering contractual, temporary professional service;

e. Temporary or emergency employees as defined in the personnel rules and regulations.

2. The classified service shall include all other positions in the City service that are not specifically placed in the exempt service by this chapter.

C. Administration Duties and Powers. The City Manager shall be the Chief Personnel Officer of Vernal City and shall administer or appoint a designee to administer the personnel system provided by this chapter hereby and by the rules and regulations it authorizes and by other applicable laws. He shall perform the duties and have the powers concerning personnel matters as follows:

1. Administer and maintain the merit personnel system and other pertinent rules and regulations established by this chapter and its authority;

2. Develop, maintain and apply procedures for the recruitment, compensation, promotion, training, discipline and related aspects of personnel management for all personnel under his jurisdiction, subject to the provisions of this chapter, council policies, and personnel rules and regulations stated herein or adopted pursuant to this chapter;

3. Issue other supplemental personnel directives as are necessary for the effective implementation of this chapter, council policies, and rules and regulations adopted pursuant hereto;

4. Recommend and submit to the Council for approval or modification such new or revised personnel rules and regulations to include:

a. An affirmative action program providing for the fair and impartial treatment of all employees and applicants for municipal employment without regard to race, color, religion, sex, age, national origin, ancestry or physical handicap,

b. An annual pay plan for all municipal employees based on the job market, the City's ability to pay, and cost-of-living adjustment,

c. Methods for determining the merit and fitness of candidates for appointment or

promotion,

d. Policies and procedures regulating reduction in force, demotions, transfers and removal, separation or discharge of employees,

e. Hours of work, standards of conduct, probationary period requirements, attendance regulations, and provisions for sick leave and vacation leave,

f. Policies and procedures governing persons holding provisional appointments,

g. Policies and procedures governing employee-management relationships,

h. Policies regarding all aspects of training and education programs,

i. Other practices and procedures necessary for the administration of the personnel system;

5. Recommend to the City Council contractual agreements with any qualified person or agency for the performance of such technical services as may be desired by Vernal City.

D. Nothing in this chapter or in the rules and regulations developed hereunder shall in any way conflict with any federal or state law, rule, regulation or requirement which is or may become binding on Vernal City because of either the statutory existence of such laws or regulations or contracts into which Vernal City has entered or may enter with other units of government.

E. Disciplinary actions and processes shall be in accordance with the Vernal City Personnel Policies and Procedures Manual. (Added during 1993 recodification)

**Section 2. Section 2.80.020 is hereby amended to read as follows**

**2.80.020 Personnel appeal of decision. Board—established—procedure.—**

~~In accordance with Utah Code Section 10-3-1106, a Personnel Appeals Board is hereby established, with the Vernal City Council serving as the appeals board. The process and the procedure of the Appeals Board shall be in accordance with Utah Code Section 10-3-1106.—~~

~~A. The governing body shall sit as the Appeals Board for appeals by an employee of discharge, suspension without pay, or involuntary transfer to a position with less remuneration and of such other appeals as the City, by resolution, may designate.—~~

~~B. When an employee has filed an appeal pursuant to UCA §10-3-1106(3)(a), the City Recorder shall forthwith deliver a copy of the appeal to the Appeals Board. The Mayor, or other presiding officer of the Appeals Board, shall set a date for hearing which shall be not more than 15 days from the date the matter was referred to the Appeals Board, unless the time is extended pursuant to §10-3-1106(5)(a) UCA.—~~

~~C. At the time set for the hearing, a majority of the governing body of the City shall be present and constitute a quorum.—~~

~~D. The action of the Appeals Board shall require concurrence of a majority of the quorum present at the hearing.—~~

~~E. No member of the Appeals Board that is closely related to the employee or that otherwise is unable to fairly and objectively judge the evidence, shall sit on the Board for that matter.—~~

~~F. As soon as a date for hearing is set, the City Recorder shall forthwith mail or deliver notice to the appealing employee and the Board members of the date, time, and place of the hearing and shall include with the notice a copy of this ordinance outlining the procedures to be followed in the hearing. The notice shall advise the employee that any request for a continuance must be approved by the City and must be requested not less~~

~~than three (3) business days prior to the date of the scheduled hearing.~~

~~G. If the employee fails to appear at the time and place set for the hearing, the default of the employee shall be entered and the previous action taken shall be affirmed. A copy of the order of default shall be mailed to the employee.~~

~~H. A defaulted employee may seek to have the Appeals Board set aside the default order for good cause shown by following the procedures outlined in the Utah Rule of Civil Procedure. A motion to set aside a default and any subsequent order shall be decided by the presiding officer.~~

~~I. In the event less than five (5) members of the governing body are available to sit as an Appeals Board in any given matter, the Mayor, with the advice and consent of the City Council, shall appoint qualified elector(s) of the City of sound judgement and good character as temporary Appeals Board members(s) to provide an Appeals Board consisting of at least five (5) individuals.~~

~~J. The City Attorney shall act as an impartial aid to the Appeals Board in outlining facts and issues. The City Prosecutor, if from a different firm, shall represent the City in presenting evidence to the Appeals Board.~~

~~K. All proceedings of the Appeals Board shall be recorded by the City and the record shall be preserved until all appeals and procedures have been resolved or for four (4) years, whoever is later.~~

A. An employee that is not exempt pursuant to Utah Code Annotated 10-3-1105 may appeal the decision of the City Manager or his designee who discharged, suspended the employee for more than two (2) days without pay, or involuntarily transferred the employee from one position to another with less remuneration for any disciplinary reason, to an Appeals Hearing Officer or the Appeal Board.

B. The appeal shall be taken by delivering a written Notice of Appeal to the City Recorder in accordance with the procedures established by this code, within ten (10) business days after the employee receives notice of the final order of the pre-disciplinary hearing. The employee shall be deemed to have received notice upon delivery to the employee personally, or leaving the notice with a person of reasonable age and discretion at the employee's address of record, or by certified or registered mail receipt showing delivery of the notice to the employee's address of record.

C. The Notice of Appeal shall be addressed to, and delivered to the City Recorder and must include the following information:

1. The name and address of the employee.
2. An identification of the order being appealed.
3. A statement of the portion or portions of the order that are disputed by the employee.
4. A statement of the relief the appellant / employee seeks.
5. A statement of facts or authority to support the requested relief.
6. A statement summarizing the reasons the relief requested should be granted.
7. The date and signature of the employee, and if represented by an attorney, the name and address of the attorney for the employee.

D. Upon receipt of a properly filed Notice of Appeal, the City Recorder shall deliver a copy of the Notice of Appeal to the Appeals Hearing Officer described in this code.

E. A Notice of Appeal that does not contain the required information or that is not timely filed shall not be considered. If the deadline to file or deliver the Notice of Appeal falls on a

weekend or City holiday the Notice of Appeal may be delivered on the next business day of the City, no later than 5:00 pm mountain time. Prior to the filing deadline the Mayor may grant an extension of the filing deadline of up to three (3) business days upon a showing of extenuating circumstances outside of the control of the appellant. The decision to grant or deny an extension is not subject to review.

F. All notices to persons represented by an attorney shall be sent to the attorney at the address given. (Ord. 87-03 §1)

**Section 3. Section 2.80.021 is hereby amended to read as follows**

**2.80.021 Appeal Board or Appeals Hearing Officer. Pre-hearing procedures.**

- ~~A. An outline of the hearing procedures shall be provided to the employee/appellant within three (3) days after receiving the notice of appeal.~~
- ~~B. The hearing shall be held within fifteen (15) days after receiving the notice of appeal, unless extended as per code.~~
- ~~C. The parties shall exchange copies of documentary evidence and witness lists at least three (3) business days prior to the scheduled hearing.~~
- ~~D. The hearing shall be conducted as an administrative proceeding and the rules of evidence used in court proceedings need not be strictly observed. However, only those items of evidence which are relevant and which are inherently reliable shall be received and considered, the decision must be made on competent evidence presented at the hearing. The residuum rule applies.~~
- ~~E. Prior to the hearing, the employee and the Appeals Board shall be provided with copies of:~~
  - ~~1. Notice of pre-disciplinary hearing given to appellant.~~
  - ~~2. Notice of termination / discipline.~~
  - ~~3. Notice of appeal submitted to the City.~~

In accordance with Utah Code Annotated 10-3-1106 and the Vernal City ordinances, an Appeal Board is hereby established. The Vernal City Council shall serve as the Appeals Board except as otherwise set forth pursuant to this ordinance. The process and procedures of the Appeal Board shall be in accordance with UCA 10-3-1106 and City ordinances adopted in accordance with Utah law. The City Council may by resolution appoint an Appeals Hearing Officer either on a case-by-case basis or to serve for a specific term designated by resolution. If an Appeal Hearing Officer is appointed, that hearing officer shall perform all of the duties of the Appeal Board set forth by statute or ordinance and except where clearly not applicable the term "Appeal Hearing Officer" may be substituted at any place in this code for the term "Appeal Board" or presiding officer" when an Appeal Hearing Officer has been designated to hear the pending appeal.

**Section 4. Section 2.80.022 is hereby amended to read as follows**

**2.80.022 Scheduling hearing; notice. Hearing procedures.**

- ~~A. At the time and place set for the hearing, the chairperson / presiding officer shall identify Board members, establish the existence of a quorum, and state for the record the date, matter to be considered, and shall identify the parties and counsel present. The employee shall be notified of the right to be represented by counsel and counsel, if any,~~

~~shall be identified.~~

~~B. The chairperson / presiding officer shall state the purpose of the hearing and outline the procedures to be followed.~~

~~C. The presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.~~

~~D. On his own motion, or upon objection by a party, the presiding officer may:~~

~~1. Exclude evidence that is irrelevant, immaterial, or unduly repetitious.~~

~~2. Exclude evidence privileged in the courts of Utah.~~

~~3. Receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document.~~

~~4. Take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the City or any court and of technical or scientific facts within the knowledge of the Board.~~

~~E. The presiding officer may not exclude evidence solely because it is hearsay.~~

~~F. The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.~~

~~G. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merit, shall be given under oath.~~

~~H. Any party at its expense may have a person, approved by the City, prepare a transcript of the hearing.~~

~~I. All hearings shall be open to all parties, however the presiding officer may take appropriate measures necessary to preserve the order and integrity of the hearing, and may order anyone disrupting the proceedings to leave.~~

~~J. Employee/appellant is entitled to confront the witnesses whose testimony is to be considered and to examine the evidence to be considered by the Appeals Board.~~

~~A. Upon receipt of the Notice of Appeal by the City Recorder, the Mayor or presiding officer of the Appeals Board or the Appeals Hearing Officer shall schedule an evidentiary hearing to take and receive evidence and fully hear and determine the matter which relates to the reason for the discharge, suspension, or transfer. Unless otherwise agreed by the parties the hearing shall be scheduled no less than fifteen (15) days and no more than forty-five (45) calendar days after the date a properly filed Notice of Appeal was received by the City Recorder.~~

~~B. When a hearing date is set, the City Recorder shall forthwith mail or deliver to the appealing employee or legal counsel and the Appeal Board members / or Appeal Hearing officer the following information:~~

~~1. Notice of date, time and place of hearing;~~

~~2. A copy of the ordinance outlining the procedures to be followed in the hearing;~~

~~C. The notice shall advise the employee that any request for a continuance must be approved by legal counsel for the City and must be requested not less than five (5) business days prior to the date scheduled for the hearing.~~

~~D. Any objection to the hearing date or time by either party must be filed with the presiding officer or designee within ten (10) business days after the notice of hearing is mailed.~~

**Section 5. Section 2.80.023 is hereby repealed in its entirety**

**2.80.023 Conducting hearing.**

The hearing shall generally be conducted according to the following procedure:

- \_\_\_\_\_ A. City position statement (opening statement – 10 minutes).
- \_\_\_\_\_ B. Employee/appellant position statement (opening statement – 10 minutes).
- \_\_\_\_\_ C. Chair identify and give oath to witnesses.
- \_\_\_\_\_ D. City call and examine witnesses and present evidence.
- \_\_\_\_\_ E. Employee/appellant cross-examine each witness after testimony / City may redirect, etc.
- \_\_\_\_\_ F. Employee/appellant call and question witnesses and present evidence.
- \_\_\_\_\_ G. City cross-examine each witness following testimony / redirect.
- \_\_\_\_\_ H. City rebuttal witnesses.
- \_\_\_\_\_ I. Appellant rebuttal witnesses.
- \_\_\_\_\_ J. City summarize/closing statement (15 minutes).
- \_\_\_\_\_ K. Employee/appellant summarize/closing statement (15 minutes).
- \_\_\_\_\_ L. Rebuttal closing statement by City (7 minutes).
- \_\_\_\_\_ M. Appeals Board voting by sealed ballot. Any action of the Appeals Board shall require a minimum of three (3) votes in favor of that action. (Reminder by chairman that Board must make decision based only upon evidence and testimony presented at hearing).
- \_\_\_\_\_ N. Tabulate votes and certify results to City Recorder within 15 days from date that matter is referred to Board of Appeals, unless time is extended pursuant to UCA — 10-3-1106(5).
- \_\_\_\_\_ O. After reaching a decision, the Appeals Board may issue a written decision including Findings of Fact. If a written order is to be prepared, the employee shall first be notified of the results of the vote and, thereafter, the written order shall forthwith be prepared and provided to the employee. If a written order is prepared, the thirty (30) days time for filing notice of appeal to the Utah Court of Appeals shall not begin to run until the written order is signed and sent to the employee.
- \_\_\_\_\_ P. A Finding of Fact that is contested may not be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.
- \_\_\_\_\_ Q. In the Event the Appeals Board upholds the discharge or discipline, notice shall be given to the employee/appellant that they have 30 days to appeal to the Utah Court of Appeals.

**Section 6. Section 2.80.024 is hereby repealed in its entirety**

**2.80.024 Additional hearing procedures.**

- \_\_\_\_\_ A. The hearing shall be public unless a private hearing is requested by the employee and agreed upon by the City.
- \_\_\_\_\_ B. At the request of either party, witnesses may be excluded prior to their testimony.
- \_\_\_\_\_ C. All witnesses shall be administered the oath prior to testifying.
- \_\_\_\_\_ D. The proceedings shall be tape recorded and the tape preserved in a manner to assure completeness and accuracy. Stenographic recording shall not be required.
- \_\_\_\_\_ E. The City shall make available City employees, if needed, as witnesses for either party.

**Section 7. Section 2.80.025 is hereby amended to read as follows**

**2.80.025 Appeal board quorum; alternate appointments. Appeal reconsideration.**

~~\_\_\_\_\_ A. Within twenty (20) days after the date that the order is issued, the employee may file a written request for reconsideration, stating the specific grounds upon which relief is requested. A request for reconsideration shall be filed with the city recorder and one copy shall be mailed by the employee to each member of the Board of Appeals that sat on the matter. The request for reconsideration must be based upon those facts and factors which would constitute a basis for a new trial under the Utah Rules of Civil Procedure. The chairperson/presiding officer shall confer with the other members of the Appeals Board and notify the employee within five (5) business days if a reconsideration or re-hearing will be granted. The decision to grant or deny reconsideration shall be at the sole discretion of the presiding officer/chairperson after consultation with the hearing board members and shall not be subject to judicial review. A motion for reconsideration which is not granted within five (5) business days shall be deemed denied.~~

~~\_\_\_\_\_ B. The filing of a motion for reconsideration or new hearing shall not extend the time for appeal unless the motion is granted.~~

~~If an Appeal Hearing Officer is not appointed, at the time set for the hearing, a majority of the Appeal Board shall be present and constitute a quorum. The action of the Appeal Board shall require concurrence of a majority of the quorum present at the hearing. No member of the Appeal Board that is closely related to the employee or that is otherwise unable to fairly and objectively judge the evidence, shall sit on the Board for that matter.~~

~~If a member of the governing body is recused, or is unable to be present at the hearing, and if less than five (5) members of the governing body are available to sit as an Appeals Board in any given matter, the Mayor, with the advice and consent of the City Council, shall appoint qualified elector(s) of the City, of sound judgement and good character, as temporary Appeal Board members to provide an Appeal Board consisting of at least five (5) individuals.~~

~~The Mayor shall act as the presiding officer unless recused or otherwise released from that duty, whereupon the Board may select any member to act as presiding officer.~~

## **Section 8. Section 2.80.026 is hereby repealed in its entirety**

### **2.80.026 Burden of proof and standard of review:**

~~\_\_\_\_\_ The standard of proof shall be preponderance of evidence. Upon judicial review, the standard of review shall be abuse of discretion.~~

## **Section 9. A new Section 2.80.030 is hereby added to read as follows**

### **2.80.030 Failure to appear - default.**

~~If the employee fails to appear at the time and place set for the hearing, default of the employee shall be entered and the previous action taken shall be affirmed. A copy of the default order shall be mailed to the employee.~~

~~A defaulted employee may request to set aside the default order for good cause shown by following the procedures set forth in the Utah Rules of Civil Procedure for setting aside a default judgement. A request to set aside the default must be filed within ten (10) calendar days of the date the default order was mailed or delivered to the employee. A motion to set aside a default order shall be decided by the presiding officer or appeals hearing officer and is not subject to review.~~

**Section 10. A new Section 2.80.040 is hereby added to read as follows**

**2.80.040 Legal counsel.**

The employee has the right to be represented by legal counsel (a member in good standing of the Utah State Bar) and counsel, if any, shall be identified.

The City Attorney shall act as an impartial aid and advisor to the Appeals Board or Appeals Hearing Officer and may communicate on behalf of the Appeals Board with counsel for the parties and assist in responding to or dealing with or ruling on procedural or evidentiary motions, objections, or issues, and may communicate on behalf of the Board as directed or authorized by the Board or the presiding officer.

The City Prosecutor, if from a different firm, shall represent the City in presenting evidence on behalf of the City to the Appeal Board or Appeals Hearing Officer and in advocating the position of the pre-disciplinary hearing officer at the appeals hearing.

**Section 11. A new Section 2.80.050 is hereby added to read as follows**

**2.80.050 Hearing recorded.**

Evidentiary hearings of the Appeals Board or Appeals Hearing Officer shall be recorded by the City and the record shall be preserved until all appeals have been resolved or as required by the City's records retention schedule. The appellant, or any other person if the hearing is open to the public, may record the evidentiary hearing. The City recording shall be the official record of the hearing. An accidental failure of the recording equipment or loss of the recording shall not invalidate the decision of the Board or Hearing Officer.

Exhibits introduced and received at the hearing shall be retained for the time period set forth above.

**Section 12. A new Section 2.80.060 is hereby added to read as follows**

**2.80.060 Objections to procedures or Hearing Board.**

Any objection to the procedures outlined in the ordinance, or by Board ruling or Hearing Officer ruling, must be filed with the presiding officer or designee within ten (10) business days after the copy of the ordinance outlining the procedures is mailed to the employee, or within ten (10) days of notification of a board / hearing officer ruling, or other objection is waived.

Any objection to the makeup of the Appeals Board or any request to recuse any member of the hearing panel must be made at least ten (10) business days prior to the date set for the hearing and may, in the discretion of the presiding officer, be grounds to reschedule the date and time of the hearing.

Any other pre-hearing objections relating to issues or matters affecting the hearing or the conduct of the hearing must be presented to the presiding officer or designee at least ten (10) business days prior to the date scheduled for the hearing and must be filed with the opposing party which shall be given an opportunity to respond, unless the matter can be summarily addressed.

The presiding officer or legal counsel for the Appeals Board / Hearing Officer may issue a written decision on any objection prior to the hearing or may reserve the matter for decision by the Appeals Board in connection with the hearing.

**Section 13. A new Section 2.80.070 is hereby added to read as follows**

**2.80.070 Exchange of information; discovery; subpoenas.**

The parties shall exchange copies of all proposed exhibits and all evidence that will be relied upon or presented at the hearing and witness lists, at least seven (7) business days prior to the hearing.

Formal discovery is not permitted unless stipulated to by counsel for both parties. The parties are encouraged to cooperate in exchanging relevant information. Upon a showing of good cause and necessity the presiding officer may allow very limited discovery.

Either party may, if necessary, require the attendance of witnesses pursuant to the provision of UCA 10-3-610. A party issuing a subpoena or requiring the attendance of a witness shall be responsible for securing attendance of the witness and paying the witness fees, costs or expenses.

**Section 14. A new Section 2.80.080 is hereby added to read as follows**

**2.80.080 Nature of hearing and evidence.**

The hearing shall be conducted as a quasi-judicial or administrative adjudicative proceeding and the rules of evidence used in court proceedings need not be strictly observed, however only those items of evidence which are relevant and which are inherently reliable and material shall be received and considered. The decision of the Appeal Board / Hearing Officer shall be made on reliable evidence presented at the hearing.

At least two (2) business days prior to the hearing the City Recorder shall deliver to the Appeals Board / Hearing Officer copies of:

A. The notice of pre-disciplinary hearing given to the appellant.

B. The order from the pre-disciplinary hearing / Notice of disciplinary action.

C. The notice of appeal filed by the employee.

D. Copies of any pre-hearing rulings or determinations made by the presiding officer or designee.

At the request of the appellant or City the hearing shall be open to the public.

At the request of either party or the Appeals Board / Hearing Officer, witnesses may be excluded prior to their testimony, and shall be admonished to not discuss their testimony with any other witness.

All witnesses shall be administered the oath prior to testifying by the presiding officer or designee.

**Section 15. A new Section 2.80.090 is hereby added to read as follows**

**2.80.090 Stipulation to additional remedies.**

As a general rule the decision of the Appeals Board / Hearing Officer may be limited to affirming the decision of the pre-disciplinary hearing officer or reversing that decision. Prior to the hearing before the Appeals Board / Hearing Officer the parties may stipulate to authorize the Appeals Board / Hearing Officer to consider as additional remedies remand to the pre-disciplinary hearing officer with instructions, or sustaining the imposition of discipline but reducing or modifying the discipline imposed. Any such stipulation shall include a waiver of

any right to appeal to the Court of Appeals or objection to the consideration by the Appeals Board / Hearing Officer of the additional remedies.

**Section 16. A new Section 2.80.100 is hereby added to read as follows**

**2.80.100 Hearing procedures.**

A. At the time and place set for the hearing, the presiding officer shall identify Board members, establish the existence of a quorum, and state for the record the date, matter to be considered, and shall identify the parties and counsel present unless a Hearing Officer is designated. The employee shall be notified of the right to be represented by counsel and counsel, if any, shall be identified.

B. The presiding officer shall state the purpose of the hearing and outline the procedures to be followed.

C. The presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.

D. On his own motion, or upon objection by a party, the presiding officer may:

1. Exclude evidence that is irrelevant, immaterial, or unduly repetitious.

2. Exclude evidence privileged in the courts of Utah.

3. Receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document.

4. Take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the City or any court and of technical or scientific facts within the knowledge of the Board.

E. The presiding officer may not exclude evidence solely because it is hearsay.

F. The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

G. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merit, shall be given under oath.

H. Any party at its expense may have a person, approved by the City, prepare a transcript of the hearing.

I. All hearings shall be open to all parties, however the presiding officer may take appropriate measures necessary to preserve the order and integrity of the hearing, and may order anyone disrupting the proceedings to leave.

J. Employee/appellant is entitled to confront the witnesses whose testimony is to be considered and to examine the evidence to be considered by the Appeals Board / Hearing officer.

K. The presiding officer may assign or authorize legal counsel or another Board member to perform any task or responsibility of the presiding officer or to assist the presiding officer as requested.

**Section 17. A new Section 2.80.110 is hereby added to read as follows**

**2.80.110 Order of presentation.**

The hearing shall be conducted according to the following procedure:

A. Witnesses shall be identified and placed under oath.

B. City position statement (opening statement - 10 minutes).

C. Employee/appellant position statement (opening statement - 10 minutes).

D. Chair identify and give oath to witnesses.

E. City call and examine witnesses and present evidence.

- F. Employee/appellant may cross-examine each witness after testimony / City may redirect, etc.
- G. Employee/appellant call and examine its witnesses and present its evidence.
- H. City may cross-examine each witness following testimony, employee may redirect, etc.
- I. City rebuttal witnesses.
- J. Employee / Appellant rebuttal witnesses.
- K. City summarize or give closing statement (15 minutes).
- L. Employee/appellant summarize or give closing statement (15 minutes).
- M. Rebuttal closing statement by City (7 minutes).
- N. Appeal Board / Hearing officer shall retire to deliberate and consider evidence and may reconvene at a later date as needed.

**Section 18. A new Section 2.80.120 is hereby added to read as follows**

**2.80.120 Decision on appeal.**

The standard of review applied to the decision of the pre-disciplinary hearing officer shall be abuse of discretion.

The decision shall be based on substantial evidence. A finding of fact on an issue that is contested should not be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.

A. If the Appeals Board is used, they shall vote by secret ballot. Any action of the Appeals Board shall require a majority or a minimum of three (3) votes in favor of the action, whichever is greater. (Prior to voting the presiding officer shall remind the Board that the decision must be based upon the evidence and testimony presented at the hearing). The presiding officer or designee shall tabulate the votes and announce the results to the Board and certify the results to the City Recorder. After reaching a decision, the Appeal Board may issue a written decision including Findings of Fact, and Conclusions, and an Order. The presiding officer may request counsel for the prevailing party to submit proposed Findings of Fact, Conclusions, and an Order for review and consideration by the Appeals Board or designee.

B. If an Appeals Hearing Officer is used, after reaching a decision, he may issue a written decision including Findings of Fact, and Conclusions, and an Order. The Hearing Officer may request Counsel for the prevailing party to submit proposed Findings of Fact, Conclusions, and an Order for review and consideration.

C. Except as otherwise agreed by the parties or as provided in Utah Code Annotated 10-3-1106(5)(a)(iii) the decision of the Appeal Board or Appeal Hearing Officer shall be certified to the City Recorder within fifteen (15) days after the day of the hearing is held, and shall be announced to the employee within fifteen (15) days after the date of the hearing or the date of receipt of any post hearing memoranda authorized by the Appeal Board or Hearing Officer. The written Finding of Fact, Conclusions, and Order shall be prepared, finalized and provided to both parties within forty (40) days after the day on which the hearing is held unless otherwise agreed by the parties.

D. If the decision is in favor of the employee, the Order shall provide that the employee shall receive:

1. The employee's salary for the period of time during which the employee is discharged or suspended without pay less any amount the employee earned from other employment or unemployment compensation during this period of time; or

2. Any deficiency in salary for the period during which the employee was transferred to a position of less remuneration for disciplinary reasons.

**Section 19. A new Section 2.80.130 is hereby added to read as follows**

**2.80.130 Reconsideration - Appeal.**

A. Within ten (10) days after the date that the order is issued, either party may deliver a written request for reconsideration to the City Recorder, stating the specific grounds upon which the relief is requested and outlining the legal and factual basis for the request. A copy of the request for reconsideration shall be mailed by the requesting party to each member of the Board of Appeals that sat on the matter or the Hearing Officer. The request for reconsideration must be based upon those facts and factors which would constitute a basis for a new trial under the Utah Rules of Civil Procedure. The presiding officer or hearing officer shall confer with the other members of the Appeals Board and notify the employee within five (5) business days if a reconsideration or re-hearing will be granted. The decision to grant or deny reconsideration shall be at the sole discretion of the presiding officer, after consultation with the Appeal Board members, or the Hearing Officer and shall not be subject to judicial review. A motion for reconsideration which is not granted within five (5) business days shall be deemed denied.

B. The filing of a motion for reconsideration or new hearing shall not extend the time for appeal unless the motion is granted.

C. A final order or action of the Appeal Board or Hearing Officer may be reviewed by the Court of Appeals by filing with the court a petition for review.

D. The petition for review must be filed with the Court of Appeals within thirty (30) days after the issuance of the final order or action of the Appeals Board or Hearing Officer.

E. The Court of Appeals review shall be:

1. On the record of the Appeals Board or Hearing Officer; and

2. For the purpose of determining if the Appeals Board or Hearing Officer abused its discretion or exceeded its authority.

**SECTION A. REPEALER.** All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance or of the code are hereby repealed.

**SECTION B. SEVERABILITY.** The provisions of this ordinance shall be severable and if any provision thereof or the application of such provision under any circumstances is held invalid and it shall not affect the validity of any other provision of this ordinance or the application in a different circumstance.

**SECTION C. EFFECTIVE DATE.** This ordinance shall take effect the day after publication the \_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
Mayor Sonja Norton

ATTEST:

\_\_\_\_\_  
Kenneth L. Bassett, City Recorder

( S E A L )

Date of Publication: \_\_\_\_\_

## RESOLUTION NO. 2016-13

**A RESOLUTION OF THE VERNAL CITY COUNCIL AMENDING THE VERNAL CITY PERSONNEL POLICIES AND PROCEDURES - SECTION 12.05.050 - PRE-DISCIPLINARY HEARING WITH EMPLOYEE.**

**WHEREAS,** The Vernal City Council has established a disciplinary policy for City employees; and

**WHEREAS,** The Council desires to streamline the process for personnel disciplinary hearings while complying with Utah State statute; and

**WHEREAS,** Vernal City has determined that the best interests and welfare of the public within its jurisdiction will best be served by approving this Resolution; and

**NOW THEREFORE BE IT RESOLVED** by the Vernal City Council as follows:

**Section 1. Section 12.05.050 is hereby amended to read as follows**

**12.05.050 Pre-disciplinary hearing with employee.**

Whenever formal disciplinary measures are anticipated, excepting placement of the employee on probationary status, and prior to any discharge, suspension over two (2) days without pay, or involuntary transfer to a position with less remuneration for any disciplinary reason, an employee that is not exempt pursuant to Utah Code Annotated 10-3-1105 (2)(a) shall be provided with an opportunity for a pre-disciplinary hearing. a pre-disciplinary hearing must be held prior to imposing disciplinary action. As provided in Section 3.03.030, termination of probationary employees, employees still in their initial probationary period shall not be entitled to a pre-disciplinary hearing. Requiring an employee to take paid vacation time or suspending an employee with pay or without pay for less than three (3) days shall not require a pre-disciplinary notice or hearing.

A. The employee shall be given prior notice of the pre-disciplinary hearing along with an explanation of charges, evidence, allegations, an explanation of the City's evidence, and reasons for considering disciplinary action and, where termination is being considered, notice that such a measure is being considered. The employee shall be advised that he or she will be given an opportunity to respond to the charges or allegations, and may bring any evidence or witnesses to the hearing which the employee believes are relevant to the hearing. Unless there are extenuating circumstances, written notice of the pre-disciplinary hearing containing the information outlined above shall be provided to the employee at least three (3) business days prior to the date of the hearing. The notice shall state the date, time, and place of the hearing and the name and title of the person that will be conducting the hearing. The employee shall be given reasonable time to prepare for the hearing.

B. The hearing shall be conducted by the City Manager or his designee, and shall be held for the purpose of allowing the employee to examine the reasons for discipline and present any information or evidence the employee believes is relevant to the decision. The employee may be represented by counsel at the employee's expense, however, such counsel may not be a participant in the pre-disciplinary hearing, but may advise client. If requested by either party, the City Manager or his designee, in its discretion, may continue the hearing, or recess the hearing to allow further review or investigation of the issues if the City Manager or his designee determined that to be necessary in the interest of justice and to more fully evaluate the facts and circumstances.

C. Requirement. The following items should be accomplished at the hearing:

1. Charges, evidence, allegations or reasons shall be given orally or in writing to the employee by the Department Head or other appointing authority.
2. The employee shall be given a full opportunity to respond and give an explanation of the

evidence against him to the City Manager, verbally or in writing, or both.

3. An employee may be compelled, orally, in writing or by implied comment, to give statements under threat of disciplinary action up to and including termination, but those statements may not be used in the criminal prosecution of the employee. Before an employee can be disciplined for refusing to answer questions, the following must occur:

- i. the employee must be ordered to answer the questions under threat of disciplinary action;
- ii. the questions must be specifically, directly, and narrowly related to the employee's duties or the employee's fitness for duty; and
- iii. the employee must be advised that the answers will not be used against the employee in criminal proceedings.

D. The City will maintain a written record of the conduct of the hearing. The City may record the pre-disciplinary hearing and either party may, at its expense, have a transcript made from the City's recording of the hearing.

E. A decision as to the disciplinary action to be taken, if any, shall be made by the City Manager or his designee, and the employee shall be notified in writing within twenty (20) working days after the hearing. If formal disciplinary action is imposed, the City Manager or his designee shall provide the employee written notice of disciplinary action along with a written explanation of any employee rights for an appeal. (Amended 11/03/2004, Res.2004-15)

**Severability.** The provisions of this resolution shall be severable and if any provision thereof or the application of such provision under any circumstances is held invalid, it shall not effect any other provision of this resolution or the application in a different circumstance.

**Effective date.** This resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** this \_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Mayor Sonja Norton

ATTEST:

\_\_\_\_\_  
Kenneth L. Bassett, City Recorder

( S E A L )

**ORDINANCE NO. 2016-17**

**AN ORDINANCE AMENDING THE VERNAL CITY MUNICIPAL CODE, SECTION 5.60.150 - APPEAL FOR RESIDENTIAL SOLICITORS LICENSE, 5.74.140 - DENIAL, REVOCATION OR SUSPENSION OF TAXI LICENSES - ADDING 5.74.145 - APPEAL FOR TAXI LICENSE.**

**WHEREAS**, the City Council finds that the regulation of certain types of businesses and commerce are necessary for orderly growth and conduct of business within the City, and;

**WHEREAS**, the City Council deems it to be in the best interest of the health, safety and welfare of the citizens to incorporate the following changes to the provisions of the Vernal City Code, and;

**WHEREAS**, the City Council has received input from the public at large in duly noticed open meetings, and has considered and discussed the advantages and disadvantages of such regulation.

**BE IT ORDAINED BY THE CITY COUNCIL OF VERNAL CITY, UTAH AS FOLLOWS:**

**Section 1. Section 5.60.150 is hereby amended to read as follows**

**5.60.150 Appeal.**

An applicant or registered solicitor whose certificate has been denied, revoked or suspended shall have the right to appeal to the City Council or its designee. Any appeal must be submitted by either the applicant, the responsible person or entity, or legal counsel for either who:

- A. Documents the relationship with the applicant or responsible person or entity; or
- B. Is licensed or authorized by the State of Utah to do so, and makes the assertion of an agency relationship. The following procedures and requirements shall apply:

- 1. Any appeal must be submitted in writing to the City Recorder with a copy to the License Officer within ten (10) business days of the decision from which the appeal is taken. Such appeal shall describe in detail the nature of the appeal, the action complained of and the grounds for appeal.

- 2. Upon request of the applicant or registered solicitor, within one business day, the City will make available any information upon which it relied in making the determination to either deny or suspend the certificate.

- 3. The Appeals Officer or City Council shall review, de novo, all written information submitted by the applicant or registered solicitor to the Licensing Officer, any additional information relied upon by the Licensing Officer as the basis for denial, suspension or revocation, and any additional information supplied by the City, applicant or registered solicitor. Any additional information submitted by any party to the appeal to the Appeals Officer shall be simultaneously submitted to the opposing party. If desired, any party shall have three (3) business days to submit rebuttal documentation to the Appeals Officer or City Council regarding the additional information submitted by the opposing party.

- 4. The Appeals Officer or City Council will render a decision no later than fifteen (15)

calendar days from the date the appeal was taken, unless an extension of time is agreed upon by the parties. In the event that any party to the appeal submits rebuttal information as allowed in this section, the fifteen (15) calendar days shall be extended to include the additional three (3) days for rebuttal.

a. The denial or suspension of the certificate shall be reversed by the Appeals Officer or City Council if upon review of the written appeal and information submitted, the Appeals Officer or City Council finds that the Licensing Officer made a material mistake of law or fact in denying or suspending the applicant or registered solicitor's certificate.

b. If the written appeal and information submitted indicates that the Licensing Officer properly denied or suspended the certificate of the applicant or registered solicitor, the denial or suspension of the certificate shall be affirmed and constitute a determination that the suspended certificate is revoked.

c. The decision of the Appeals Officer or City Council shall be delivered to the applicant or registered solicitor by the means designated in the completed application, or as otherwise agreed upon when the appeal was filed.

5. After the ruling of the Appeals Officer or City Council, the applicant or solicitor is deemed to have exhausted all administrative remedies with the City.

6. Nothing herein shall impede or interfere with the applicant's, solicitor's, or City's right to seek relief in a court of competent jurisdiction.

**Section 2. Section 5.74.140 is hereby amended to read as follows**

**5.74.140 Denial, revocation or suspension of licenses.**

**A.** Upon the recommendation of the police department or the license clerk, based upon a violation of any of the provisions of this Chapter or of any of the provisions of any other ordinance of the City, or the laws of the County or State of Utah, or for any immoral, indecent or offensive conduct which is constituted as a disqualifying event as defined in Section 5.74.060, the above-mentioned taxicab business license and taxicab driver's license may be either denied, permanently revoked or suspended by the City Council for such period of time as the Council shall determine.

**B.** If the applicant has engaged in a disqualifying event as defined in Section 5.74.060, the license shall be denied.

**C.** Any suspension of the taxicab driver's license shall be noted on such license, together with a statement of the reasons therefor, and the licensee shall thereupon be deprived of the license and the driver's badge until the expiration of the period of the suspension in the event that a suspension only is imposed. A second suspension for the same reason or a third suspension for any reason shall be cause to permanently revoke the driver's license. No person whose license has been so revoked shall again be permitted to obtain a taxicab driver's license in Vernal City.

**D.** Notice of denial or suspension. Upon determination of the Licensing Officer to deny an applicant's completed application or to suspend a taxi cab license, the City shall cause written notice to be sent to the applicant or registered solicitor by the method indicated in the completed application. The notice shall specify the grounds for the denial or suspension, the documentation or information the City relied on to make the decision, the availability of the documentation for review by applicant upon one (1) business day notice to the City, and the date upon which the

denial or suspension of the certificate shall take effect. It shall further state that the applicant or registered solicitor shall have ten (10) business days from the receipt of the notice of denial or suspension to appeal the same. The denial or suspension of the license shall be effective no sooner than two (2) calendar days from the date the notice is sent, unless that suspension is because of exigent circumstances outlined in Section 000-003(34)(C)(4), in which case, the suspension is effective immediately. The denial or suspension shall remain effective unless and until the order is rescinded, overturned on appeal, or determined by a court to be contrary to equity or law. Failure to appeal the suspension of a certificate automatically results in its revocation.

**Section 3. A new Section 5.74.145 is hereby added to read as follows**

**5.74.145 Appeal.**

An applicant whose license has been denied, revoked or suspended shall have the right to appeal to the City Council or its designee. Any appeal must be submitted by either the applicant, the responsible person or entity, or legal counsel for either who:

A. Documents the relationship with the applicant or responsible person or entity; or

B. Is licensed or authorized by the State of Utah to do so, and makes the assertion of an agency relationship. The following procedures and requirements shall apply:

1. Any appeal must be submitted in writing to the City Recorder with a copy to the Business License Officer within ten (10) business days of the decision from which the appeal is taken. Such appeal shall describe in detail the nature of the appeal, the action complained of and the grounds for appeal.

2. Upon request of the applicant, within one (1) business day, the City will make available any information upon which it relied in making the determination to either deny or suspend the license.

3. The Appeals Officer or City Council shall review, de novo, all written information submitted by the applicant to the Business Licensing Officer, any additional information relied upon by the Business Licensing Officer as the basis for denial, suspension or revocation, and any additional information supplied by the City or applicant. Any additional information submitted by any party to the appeal, to the Appeals Officer shall be simultaneously submitted to the opposing party. If desired, any party shall have three (3) business days to submit rebuttal documentation to the Appeals Officer or City Council regarding the additional information submitted by the opposing party.

4. The Appeals Officer or City Council will render a decision no later than fifteen (15) calendar days from the date the appeal was taken, unless an extension of time is agreed upon by the parties. In the event that any party to the appeal submits rebuttal information as allowed in this section, the fifteen (15) calendar days shall be extended to include the additional three (3) days for rebuttal.

a. The denial or suspension of the license shall be reversed by the Appeals Officer or City Council if upon review of the written appeal and information submitted, the Appeals Officer or City Council finds that the Business Licensing Officer made a material mistake of law or fact in denying or suspending the applicant's license

b. If the written appeal and information submitted indicates that the Business Licensing Officer properly denied or suspended the license of the applicant, the denial or suspension of the license shall be affirmed and constitute a determination that the

suspended license is revoked.

c. The decision of the Appeals Officer or City Council shall be delivered to the applicant by the means designated in the completed application, or as otherwise agreed upon when the appeal was filed.

5. After the ruling of the Appeals Officer or City Council, the applicant is deemed to have exhausted all administrative remedies with the City.

6. Nothing herein shall impede or interfere with the applicant's or City's right to seek relief in a court of competent jurisdiction.

**SECTION A. REPEALER.** All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance or of the code are hereby repealed.

**SECTION B. SEVERABILITY.** The provisions of this ordinance shall be severable and if any provision thereof or the application of such provision under any circumstances is held invalid and it shall not affect the validity of any other provision of this ordinance or the application in a different circumstance.

**SECTION C. EFFECTIVE DATE.** This ordinance shall take effect the day after publication the \_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
Mayor Sonja Norton

ATTEST:

\_\_\_\_\_  
Kenneth L. Bassett, City Recorder

( S E A L )

Date of Publication: \_\_\_\_\_